

custody of the veteran so committed. Notice of such pending proceedings shall be furnished the person to be committed and his right to appear and defend shall not be denied.

SEC. 17. When a minor ward for whom a guardian has been appointed under the provisions of this act or other laws of this state shall have attained his or her majority, and if incompetent shall be declared competent by the Bureau and the court, and when any incompetent ward, not a minor, shall be declared competent by said Bureau and the court, the guardian shall upon making a satisfactory accounting be discharged upon a petition filed for that purpose.

SEC. 18. This act shall be construed liberally to secure the beneficial intents and purposes thereof and shall apply only to beneficiaries of the Bureau.

SEC. 19. The invalidity of any portion of this act shall not affect the validity of any other portion thereof which can be given effect without such invalid part.

SEC. 20. All acts and parts of acts inconsistent with any provisions of this act are hereby repealed.

SEC. 21. That this act shall be in force and effect from and after its ratification.

Ratified this the 18th day of February, A. D. 1929.

CHAPTER 34

AN ACT TO PROVIDE FOR THE STERILIZATION OF THE MENTALLY DEFECTIVE AND FEEBLE-MINDED INMATES OF CHARITABLE AND PENAL INSTITUTIONS OF THE THE STATE OF NORTH CAROLINA.

The General Assembly of North Carolina do enact:

SECTION 1. The governing body or responsible head of any penal or charitable institution supported wholly or in part by the State of North Carolina, or any sub-division thereof, is hereby authorized and directed to have the necessary operation for asexualization or sterilization performed upon any mentally defective or feeble-minded inmate or patient thereof, as may be considered best in the interest of the mental, moral or physical improvement of the patient or inmate, or for the public good.

SEC. 2. It shall be the duty of the board of commissioners of any county of North Carolina, at the public cost and expense, to have the operation performed upon any mentally defective or feeble-minded resident of the county, not an inmate of any public institution, upon the petition and request of the next kin or legal guardian of such mentally defective person: Provided,

Guardian to file final account and be discharged, when

Petition to be filed.

Act to be construed liberally.

Applicable only to beneficiaries of Bureau.

Invalid parts of act not to effect valid parts.

Conflicting laws repealed.

Sterilization of mentally defective and feeble-minded inmates of state institutions.

County to have charge of sterilization of such residents in said county, not in state institutions.

Proviso.

SEC. 3. No operation under this Act shall be performed by other than a duly qualified and registered North Carolina surgeon, and by him, only upon a written order signed by the responsible executive head of the institution, or board, or next of kin, or legal guardian having custody or charge of the feeble-minded, or mentally defective inmate or patient, with the special provision that the order so issued shall in each specific case have the signed approval of four reviewers, which shall be (1) The Commissioner of Charities and Public Welfare of North Carolina; (2) The Secretary of the State Board of Health of North Carolina; (3 and 4) The Chief Medical Officer of each of any two of the institutions for the feeble-minded or insane of the State of North Carolina.

SEC. 4. A medical and family history of the feeble-minded, or mentally defective patient or inmate, so far as obtainable, shall be furnished by the original petitioner and attached to the order for the information and guidance of the reviewers. This history shall be finally deposited with the Board of Charities and Public Welfare of North Carolina as permanent record.

SEC. 5. Such asexualization or sterilization shall in all cases as in this act permitted be lawful, and the person or persons who shall request, consent, authorize or direct the same, or perform or participate in such operation as herein before authorized, permitted and directed, shall not be liable, either civilly or criminally, therefor.

SEC. 6. This Act shall repeal all laws and clauses of laws in conflict therewith and become of effect immediately upon ratification.

Ratified this the 18th day of February, A. D. 1929.

CHAPTER 35

AN ACT TO AMEND SECTION 593 OF ARTICLE 23, VOLUME 3, OF THE CONSOLIDATED STATUTES OF NORTH CAROLINA, RELATIVE TO JUDGMENTS AND ORDERS OF FORECLOSURE AUTHORIZED TO BE ENTERED BY CLERKS OF THE SUPERIOR COURT.

The General Assembly of North Carolina do enact:

SECTION 1. That section five hundred and ninety-three, article twenty-three, Volume Three, of the Consolidated Statutes of North Carolina, relative to judgments and orders of foreclosure authorized to be entered by clerks of the Superior Court, be and the same is hereby amended by adding at the end of said section the following: "The commissioners appointed to make foreclosure sales, as herein authorized, may proceed to

Operation to be performed by only registered surgeon. Upon written order of institution head or next of kin.

Approval of Board of Reviewers. Personnel.

Medical and family history to be furnished.

Such history to be permanent record.

Persons involved in operation not liable civilly or criminally.

Conflicting laws repealed.

Consolidated Statutes 593, article 23, Volume 3, amended.

Immediate advertisement in foreclosure sales.

CHAPTER 1281 Session Laws—1973

H. B. 1611

CHAPTER 1281

AN ACT TO REWRITE CHAPTER 35, ARTICLE 7, OF THE GENERAL STATUTES ENTITLED "PERSONS WITH MENTAL DISEASES AND INCOMPETENTS".

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 35 of the General Statutes of North Carolina is hereby rewritten to read:

"Article 7.

"Sterilization of Persons Mentally Ill and Mentally Retarded.

"§ 35-36. *Sterilization of mental defectives in State institutions.*—The responsible director, or other public official performing the functions of such director, of any institution supported wholly or in part by the State of North Carolina is hereby authorized to petition the district court of the county in which such institution is located for the sterilization operation of any mentally ill or retarded resident or patient thereof as may be considered in the best interest of the mental, moral, or physical improvement of the resident or patient, or for the public good, provided, that no operation authorized in this section shall be lawful unless and until the provisions of this Article shall first be complied with. It shall be the responsibility of the State institution to provide or pay for the cost and expense of the operations authorized in this section for those persons residents or patients in State institutions.

"§ 35-37. *Sterilization of mental defectives not in State institutions.*—The county director of social services, or other public official performing the functions of such director, is hereby authorized to petition the district court of his county for the sterilization operation of any mentally ill or retarded resident of the county, not a resident or patient of any State institution, or of any mentally ill or retarded person who is on parole from a State institution considered in the best interest of the mental, moral, or physical improvement of such resident, or for the public good, provided that no operation authorized in this section shall be lawful unless and until the provisions of this Article shall first be complied with. It shall be the responsibility of the board of commissioners of the respective counties to provide or pay for the cost and expense of the operations authorized in this section for those persons residents in their respective counties.

"§ 35-38. *Who shall perform sterilization operations upon the mental defectives.*—No operation under this Article shall be performed by other than a duly qualified and licensed North Carolina physician or surgeon, pursuant to Chapter 90 of the General Statutes as amended, and by him only upon a written order signed by the court having authority under the provisions of either G.S. 35-41 or G.S. 35-42. The petitioner will select the physician or surgeon to perform the sterilization operation and notify the patient and next of kin. If however, the patient or next of kin wishes to select a physician or surgeon other than the one selected by the petitioner, it will be the responsibility of the patient or next of kin to pay for the costs and expense of the sterilization operation. In the event the patient or next of kin is unable to provide for payment of the physician or surgeon selected by them, the operation will be performed by the physician or surgeon selected by the petitioner.

“§ 35-39. *Duty of petitioner.*—It shall be the duty of such petitioner promptly to institute proceedings as provided by this Article in any of the following circumstances:

(1) When in his opinion it is for the best interest of the mental, moral or physical improvement of the patient, resident of an institution, or noninstitutional individual, that he or she be sterilized.

(2) When in his opinion it is for the public good that such patient, resident of an institution, or noninstitutional individual be sterilized.

(3) When in his opinion such patient, resident of an institution, or noninstitutional individual would be likely, unless sterilized, to procreate a child or children who would have a tendency to serious physical, mental, or nervous disease or deficiency; or, because of a physical, mental, or nervous disease or deficiency which is not likely to materially improve, the person would be unable to care for a child or children.

(4) When requested to do so in writing by the next of kin or legal guardian of such patient, resident of an institution, or noninstitutional individual.

“§ 35-39.1. *Contents of petition.*—The petition shall contain allegations of the results of psychological or psychiatric tests supporting the assertion that such person is subject to the provisions of this Article; shall contain the statement of a physician who has examined such person affirming whether or not there is any known contraindication to the requested surgical procedure; shall state the name and address of the physician or surgeon who will perform the operation; and shall contain the written consent or objection of the next of kin, the legal guardian or, if there is no next of kin and no known legal guardian a guardian ad litem who shall be appointed by the district court judge and who shall make investigation and report to the court before the hearing shall commence. The petition should also contain the consent or objection of the person upon whom the sterilization operation is to be performed. In the event the person upon whom the operation is to be performed is not capable of giving consent or objection, there must be a certification by the petitioner that the procedure has been explained to the person upon whom the operation is to be performed.

“§ 35-39.2. *Copy of petition served on patient.*—At least 20 days prior to the hearing on the petition in the district court, a copy of such petition must be served upon the resident of the institution, patient, or noninstitutional individual and to the legal or natural guardian, guardian ad litem, or next of kin of the resident of the institution, patient, or noninstitutional individual.

“§ 35-40. *Judge to order investigation.*—If the petitioner instituting the sterilization proceedings is other than the county director of social services the judge shall order the county director of social services in the county in which the person upon whom the operation is to be performed has domicile to investigate and make recommendations to him regarding the case.

“§ 35-41. *Hearing before the judge of district court.*—Should the petitioner, the person subject to the petition, or any other interested party request a hearing, a hearing shall be held in the district court before the judge without a jury. In the absence of written objection filed with the court by the person alleged to be subject to this section or by any other interested party on his or her behalf, the court may render judgment without the appearance of witnesses. In the event a hearing is requested the district attorney for the district in which the petition is heard or the district attorney's assistant shall present the

evidence for the petitioner. The respondent shall be entitled to examine the petitioner's witnesses and shall be entitled to present evidence in his own behalf. If the judge of the district court shall find from the evidence that the person alleged to be subject to this section is subject to it and that because of a physical, mental, or nervous disease or deficiency which is not likely to materially improve, the person would probably be unable to care for a child or children; or, because the person would be likely, unless sterilized, to procreate a child or children which probably would have serious physical, mental, or nervous diseases or deficiencies, he shall enter an order and judgment authorizing the physician or surgeon named in the petition to perform the operation.

"§ 35-42. *Appeal to superior court.*—An appeal to the superior court may be had by the person alleged to be subject to this section or any other interested party on such judgment in the district court if filed within 15 days following the date the court judgment is entered. The proceedings before the superior court shall constitute a trial de novo, and upon application of either party shall be heard before a jury. The District Attorney for the district in which the petition is heard or his assistant shall present the evidence for the petitioner. The respondent shall be entitled to examine the petitioner's witnesses and to present evidence in his own behalf. Any decision of the superior court in such cases may be appealed to the appellate courts as in other civil cases. The cost of the appeal, if any, to the superior court and higher courts shall be taxed as in other civil cases and the pendency of any appeal shall stay the proceedings in the lower court until the appeal be finally determined. Pauper's affidavits regarding court costs and costs of appeal may be filed as in other cases made and provided by the laws of this State.

"§ 35-43. *Right to counsel.*—The person alleged to be subject to the provisions of this section shall have the right to counsel at all stages of the proceedings provided for herein. This person and all others served with the notification provided for in G.S. 35-39.2 shall be fully informed of the person's entitlement to counsel at the time of this service of notice. This information shall be given in language and in a manner calculated to insure, insofar as such is possible in view of the individual's capability to comprehend it, that the recipient understands the entitlement. Every person subject to be sterilized under this Article after the filing of the petition shall have counsel at every stage of the proceedings. If there is a conflict between the election of the person concerned and that of the other persons being served with notice, determination of the question of representation by counsel shall be made by the court having jurisdiction of the case. The person concerned may, in any instance, be represented by counsel retained by him. In cases of claimed indigency, a request for counsel shall be processed in the manner provided for in Subchapter IX, Chapter 7A, General Statutes of North Carolina.

"§ 35-44. *Sterilization procedure to be performed after court judgment.*—After judgment of the court in accordance with G.S. 35-41 and G.S. 35-42 shall have become final to the effect that such sterilization shall be performed upon such person subject to this section, a sterilization procedure may be performed by a physician upon such person subject to this section.

"§ 35-44.1. *Sterilization procedure defined.*—Wherever used in this section, the words 'sterilization procedure' shall include and authorize the performance by the physician of any procedure or operation deemed to be in the best interest

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of the individual patient or intended to prevent conception, but does not include castration.

“§ 35-44.2. *Civil or criminal liability of parties limited.*—When an operation shall have been performed in compliance with the provisions of this law, no physician duly licensed without restriction to practice medicine and surgery in this State or other person legally participating in the execution of the provisions of this act shall be liable civilly or criminally on account of such operation or participation therein, except in the case of negligence in the performance of said procedures.

“§ 35-44.3. *Necessary medical treatment unaffected by Article.*— Nothing in this section shall be construed so as to require compliance with this section or to prevent the medical or surgical treatment for sound therapeutic purposes of any person in this State, by a physician duly licensed without restriction to practice medicine and surgery in this State, which treatment may involve the nullification or destruction of the reproductive functions at the same time that it serves such sound therapeutic purposes.

“§ 35-44.4. *Hospitals not compelled to admit patient.*— Nothing in this section shall require a hospital to admit any patient under the provisions hereof for the purpose of performing a sterilization procedure.”

Sec. 2. This act shall become effective on and after January 1, 1975.

In the General Assembly read three times and ratified, this the 11th day of April, 1974.

H. B. 1764 CHAPTER 1282

AN ACT TO AMEND G.S. 105-147 TO ALLOW A DEDUCTION FOR THE COST OF A SEEING-EYE DOG.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-147 is hereby amended by adding after current subsection (24), a new subsection (25) to read as follows:

“(25) The purchase price of a seeing-eye dog actually purchased and used by a person who is blind, and/or all of the cost of maintenance and upkeep of a seeing-eye dog, including veterinary expenses. The amount claimed under this subsection shall not be allowed as a deduction under G.S. 105-147(11).”

Sec. 2. This act shall become effective January 1, 1974.

In the General Assembly read three times and ratified, this the 11th day of April, 1974.

H. B. 2125 CHAPTER 1283

AN ACT RELATING TO ZONING IN MECKLENBURG COUNTY AND THE CITY OF CHARLOTTE.

The General Assembly of North Carolina enacts:

Section 1. The governing bodies of Mecklenburg County and the City of Charlotte, in addition to the authority conferred upon them by the General or local law, are hereby empowered by ordinance to regulate in any portion or portions of the City of Charlotte and the County of Mecklenburg within their existing zoning jurisdictions the uses of buildings and structures for trade, industry, residence, recreation, public activities or other purposes, and the uses

affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 6. Chapter 1046, Session Laws of 1963, is hereby repealed.

Sec. 7. All laws and clauses of laws in conflict with the provisions of this act are hereby repealed.

Sec. 8. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 8th day of June, 1977.

H. B. 786

CHAPTER 496

AN ACT TO DELETE ALLEGHANY COUNTY FROM THE "NO CLOSED SEASON" PROVISIONS OF G.S. 113-111.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-111 is hereby amended by deleting from the second line thereof the word "Alleghany" and by deleting from the fifth line thereof the word "Watauga,".

Sec. 2. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 8th day of June, 1977.

H. B. 920

CHAPTER 497

AN ACT TO REPEAL G.S. 143B-151 AND G.S. 143B-152 SO AS TO ABOLISH THE EUGENICS COMMISSION.

Whereas, by Chapter 1281, 1973 Session Laws (1974 Session) the procedures for sterilization of persons who are mentally ill or mentally retarded (when appropriate) were placed in the judicial system; and

Whereas, there is no longer a need nor an appropriate function for the Eugenics Commission; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-151 and G.S. 143B-152 as they appear in Volume 3C of the General Statutes are repealed.

Sec. 2. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 8th day of June, 1977.

H. B. 1065

CHAPTER 498

AN ACT TO AMEND G.S. 75-27 SO THAT A PERSON WHO RECEIVES UNSOLICITED GOODS MAY TREAT THEM AS A GIFT AND IS UNDER NO OBLIGATION TO PAY FOR THE UNSOLICITED GOODS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75-27 is amended by deleting from the caption the words "through the mail" and from the second line thereof the words "by mail or common carrier".

Sec. 2. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 8th day of June, 1977.

affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 6. Chapter 1046, Session Laws of 1963, is hereby repealed.

Sec. 7. All laws and clauses of laws in conflict with the provisions of this act are hereby repealed.

Sec. 8. This act shall become effective upon ratification.

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Section 1. G.S. 75-27 is amended by deleting from the caption the words "through the mail" and from the second line thereof the words "by mail or common carrier".

Sec. 2. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 8th day of June, 1977.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

SESSION LAW 2003-13
HOUSE BILL 36

AN ACT TO REPEAL THE LAW THAT AUTHORIZES THE INVOLUNTARY STERILIZATION OF PERSONS WHO ARE MENTALLY ILL OR MENTALLY RETARDED, TO PERMIT THE STERILIZATION OF MENTALLY ILL OR MENTALLY RETARDED WARDS ONLY WHEN THERE IS A MEDICAL NECESSITY, AND TO MAKE CONFORMING CHANGES TO THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

PART I. REPEALS THE LAW AUTHORIZING INVOLUNTARY STERILIZATIONS AND PERMITS THE STERILIZATION OF MENTALLY ILL OR MENTALLY RETARDED WARDS ONLY WHEN THERE IS A MEDICAL NECESSITY.

SECTION 1. Article 7 of Chapter 35 of the General Statutes is repealed.

SECTION 1.(a) Article 8 of Chapter 35A is amended by adding a new section to read:

"§ 35A-1245. Procedure to permit the sterilization of a mentally ill or a mentally retarded ward in the case of medical necessity.

(a) A guardian of the person shall not consent to the sterilization of a mentally ill or mentally retarded ward unless an order from the clerk has been obtained in accordance with this section.

(b) If a mentally ill or mentally retarded ward needs to undergo a medical procedure that would result in sterilization, the ward's guardian shall petition the clerk for an order to permit the guardian to consent to the procedure. The petition shall contain the following:

(1) A sworn statement from a physician licensed in this State who has examined the ward that the proposed procedure is medically necessary and not for the sole purpose of sterilization or for the purpose of hygiene or convenience.

(2) The name and address of the physician who will perform the procedure.

(3) A sworn statement from a psychiatrist or psychologist licensed in this State who has examined the ward as to whether the mentally ill or mentally retarded ward is able to comprehend the nature of the proposed procedure and its consequences and provide an informed consent to the procedure.

(4) If the ward is able to comprehend the nature of the proposed procedure and its consequences, the sworn consent of the ward to the procedure.

(c) A copy of the petition shall be served on the ward personally. If the ward is unable to comprehend the nature of the proposed procedure and its consequences and is unable to provide an informed consent, the clerk shall appoint an attorney to represent the ward.

(d) Should the ward or the ward's attorney request a hearing, a hearing shall be held. Otherwise, the clerk may enter an order without the appearance of witnesses. If a hearing is held, the guardian and the ward may present evidence.

(e) If the clerk finds the following, the clerk shall enter an order permitting the guardian to consent to the proposed procedure:

- (1) The ward is capable of comprehending the procedure and its consequences and has consented to the procedure, or the ward is unable to comprehend the procedure and its consequences.
- (2) The procedure is medically necessary and is not solely for the purpose of sterilization or for hygiene or convenience.

(f) The guardian or the ward, the ward's attorney, or any other interested party may appeal the clerk's order to the superior court in accordance with G.S. 1-301.2(e)."

PART II. CONFORMING CHANGES TO THE GENERAL STATUTES.

SECTION 2. G.S. 1-301.2(g) reads as rewritten:

"(g) Exception for Incompetency and Foreclosure ~~Proceedings~~. Proceedings and Proceedings to Permit Sterilization for Medical Necessity. –

- (1) Proceedings for adjudication of incompetency or restoration of competency under Chapter 35A of the General Statutes, or proceedings to determine whether a guardian may consent to the sterilization of a mentally ill or mentally retarded ward under G.S. 35A-1245, shall not be transferred even if an issue of fact, an equitable defense, or a request for equitable relief is raised. Appeals from orders entered in these proceedings are governed by Chapter 35A to the extent that the provisions of that Chapter conflict with this section.
- (2) Foreclosure proceedings under Article 2A of Chapter 45 of the General Statutes shall not be transferred even if an issue of fact, an equitable defense, or a request for equitable relief is raised. Equitable issues may be raised only as provided in G.S. 45-21.34. Appeals from orders entered in these proceedings are governed by Article 2A of Chapter 45 to the extent that the provisions of that Article conflict with this section."

SECTION 2.(a) G.S. 7A-451(a)(10) is repealed.

SECTION 3. G.S. 35A-1203(e) reads as rewritten:

"(e) Where a guardian or trustee has been appointed for a ward under former Chapter 33 or former Chapter 35 of the General Statutes, the clerk, upon his own motion or the motion of that guardian or trustee or any other interested person, may designate that guardian or trustee or appoint another qualified person as guardian of the person, guardian of the estate, or general guardian of the ward under this Chapter; provided, the authority of a guardian or trustee properly appointed under former Chapter 33 or former Chapter 35 of the General Statutes to continue serving in that capacity is not dependent on such motion and designation."

SECTION 4. G.S. 35A-1241(a) reads as rewritten:

"(a) To the extent that it is not inconsistent with the terms of any order of the clerk or any other court of competent jurisdiction, a guardian of the person has the following powers and duties:

- (1) The guardian of the person is entitled to custody of the person of ~~his~~the guardian's ward and shall make provision for ~~his~~the ward's care, comfort, and maintenance, and shall, as appropriate to the ward's needs, arrange for ~~his~~the ward's training, education, employment, rehabilitation or habilitation. The guardian of the person shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects that are with the ward.
- (2) The guardian of the person may establish the ward's place of abode within or without this State. In arranging for a place of abode, the guardian of the person shall give preference to places within this State over places not in this State if in-State and out-of-State places are substantially equivalent. ~~He~~ The guardian also shall give preference to places that are not treatment facilities. If the only available and

appropriate places of domicile are treatment facilities, ~~he~~the guardian shall give preference to community-based treatment facilities, such as group homes or nursing homes, over treatment facilities that are not community-based.

- (3) The guardian of the person may give any consent or approval that may be necessary to enable the ward to receive medical, legal, psychological, or other professional care, counsel, treatment, or service. ~~He~~ The guardian may shall not, however, consent to the sterilization of a mentally ill or mentally retarded ward. ~~Such sterilization may be performed only after compliance with Chapter 35, Article 7.~~ ward unless the guardian obtains an order from the clerk in accordance with G.S. 35A-1245. The guardian of the person may give any other consent or approval on the ward's behalf that may be required or in the ward's best interest. ~~He~~The guardian may petition the clerk for the clerk's concurrence in the consent or approval."

SECTION 5. G.S. 90-21.13(e) reads as rewritten:

"(e) In the event of any conflict between the provisions of this section and those of ~~Article 7 of Chapter 35 and G.S. 35A-1245 and Articles 1A and 19 of Chapter 90,~~ the provisions of those Articles shall control and continue in full force and effect."

SECTION 6. G.S. 90-275 reads as rewritten:

"§ 90-275. Article does not affect eugenical or therapeutical sterilization laws.duty of guardian to obtain order permitting guardian to consent to sterilization of a mentally ill or mentally retarded ward.

Nothing in this Article shall be deemed to affect the provisions of ~~Article 7 of Chapter 35 of the General Statutes of North Carolina.~~ G.S. 35A-1245."

SECTION 7. G.S. 108A-14(a)(10) is repealed.

SECTION 8. G.S. 148-22.2 reads as rewritten:

"§ 148-22.2. Procedure when surgical operations on inmates are necessary.

The medical staff of any penal institution of the State of North Carolina is hereby authorized to perform or cause to be performed by competent and skillful surgeons surgical operations upon any inmate when such operation is necessary for the improvement of the physical condition of the inmate. The decision to perform ~~such an~~ operation shall be made by the chief medical officer of the institution, with the approval of the superintendent of the institution, and with the advice of the medical staff of ~~said~~ the institution. No ~~such~~ operation shall be performed without the consent of the inmate; or, if the inmate ~~be~~is a minor, without the consent of a responsible member of ~~his~~the inmate's family, a guardian, or one having legal custody of ~~such~~the minor; or, if the inmate be non compos mentis, then the consent of a responsible member of ~~his~~the inmate's family or of a guardian ~~must~~shall be obtained. Any surgical operations on inmates of State penal institutions shall also be subject to the provisions of Article 1A of Chapter 90 of the General Statutes and G.S. 90-21.13 and G.S. 90-21.14.

If the operation on the inmate is determined by the chief medical officer to be an emergency situation in which immediate action is necessary to preserve the life or health of the inmate, and the inmate, if sui juris, is unconscious or otherwise incapacitated so as to be incapable of giving consent or in the case of a minor or inmate non compos mentis, the consent of a responsible member of ~~his~~the inmate's family, guardian, or one having legal custody of ~~such~~the inmate cannot be obtained within the time necessitated by the nature of the emergency situation, then the decision to proceed with the operation shall be made by the chief medical officer and the superintendent of the institution with the advice of the medical staff of the institution.

In all cases falling under this Article [section], the chief medical officer of the institution and the medical staff of the institution shall keep a careful and complete record of the measures taken to obtain the permission for ~~such~~the operation and a complete medical record signed by the medical superintendent or director, the surgeon performing the operation and all surgical consultants of the operation performed.

~~This Article [section] is not to be considered as affecting the provisions of Article 7 of Chapter 35 of the General Statutes dealing with eugenical sterilization."~~

SECTION 9. This act is effective when it becomes law and applies to all petitions for sterilization pending and orders authorizing sterilization that have not been executed as of the effective date of this act.

In the General Assembly read three times and ratified this the 7th day of April, 2003.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Richard T. Morgan
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 10:35 a.m. this 17th day of April, 2003